(1)

No. 91-931

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

EDWARD R. STEPHENS, DAVID WAYNE HOLLAND, DANIEL B. CARVER, SR., and MARION FRANKLIN SHIRLEY, JR.

Petitioners,

Respondents.

versus

JAMES E. McKINNEY, ET AL.,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

David W. Holland, Pro Se

Marion Franklin Shirley, Jr., Pro Se

Daniel B. Carver, Sr., Pro Se

Edward R. Stephens, Pro Se

(Addresses on the Conclusion)

QUESTIONS PRESENTED

In **Giuglio v. United States,** 405 U.S. 150 (1972) this Court said "as long ago a **Mooney v. Holohan,** 294 U.S. 103 (1935) this Court made clear that deliberate deception of a Court and jurors by the presentation of known false evidence is incompatible with the 'rudimentary demands of justice'. This was reaffirmed in **Pyle v. Kansas,** 317 U.S. 213 (1942). The Eleventh Circuit has adopted this theory as late as April 17, 1991 in **DeMarco v. United States,** 928 F. 2d 1074, however, as will be shown below, the Eleventh Circuit failed to apply this theory in the Petitioners case.

1. Should the Respondents be allowed to recover money damages from the Petitioners after Respondents attorney, Morris Dees presented evidence, which he either knew or should have known to be false and perjurious. Also, Mr. Dees argued to the jury these issues, which he knew, or should have known were either false or misleading.

2. The Eleventh Circuit Court of Appeals erred in refusing to recuse themselves from hearing this appeal after the tragic death of their friend and colleague, who at the time of his death was an active judge on this Circuit. Immediately after the death of Judge Vance, the national news media, specifically the Atlanta Journal, the largest circulated paper in the southeast, insinuated that the death was caused by members of white racist organizations, specifically the Ku Klux Klan. At least two (2) of these Petitioners were questioned by the Federal Bureau of Investigation concerning the death of Judge Vance. Further, in the

case of **McMullen v. Carson,** 754 F. 2d 926 (11th Circuit 1958) the eleventh circuit clearly shows their bias against members of the Ku Klux Klan by stating that: "The *Ku Klux Klan is a criminal organization. All of these Petitioners are either active members or former members of various Ku Klux Klan groups.*"

3. The Eleventh Circuit Court of Appeals, when deciding cases on which they do not like the parties **"substituted its own findings for those of the district court."** This court stated this concerning the Eleventh Circuit in **Amadeo v. Zant,** 108 S. ct. 1771, 1777-79 (1988). The Eleventh Circuit in their opinion on October 27, 1989, concerning these Petitioners stated: **"Through the four persons who are appellants here apparently did not throw rocks or bottles, in the direction of the marchers. . ."** Nowhere in the record is it even alleged that the Petitioners in this action threw anything in any direction.

LIST OF PARTIES

Edward R. Stephens

David W. Holland

Daniel B. Carver, Sr.

Marion Franklin Shirley, Jr.

James E. McKinney and all other persons who participated in a Brotherhood March in Forsyth County, Cumming, Georgia on January 17, 1987.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

EDWARD R. STEPHENS, DAVID WAYNE HOLLAND, DANIEL B. CARVER, SR., and MARION FRANKLIN SHIRLEY, JR.

Petitioners,

Respondents.

versus

JAMES E. McKINNEY, ET AL.,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioners, respectfully prays that a Writ of Certiorari issue to review the decision for the United States Court of Appeals for the Eleventh Circuit, entered in the above styled proceeding on May 6, 1991. The Court of Appeals for the Eleventh Circuit denied

a timely filed motion for rehearing in banc on June 19, 1991.

OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals was not an officially published opinion, but the opinion is reprinted in the appendix.

The order of the Eleventh Circuit Court of Appeals denying the Petitioners rehearing and suggestion of rehearing in banc is reprinted in the appendix.

JURISDICTION

The jurisdiction of this Court to review the decision of the Eleventh Circuit is invoked under 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

The statement of the case is immaterial to the issue presented in this Writ, however, for a complete statement of this case, same can be found in **Edward R. Stephens, et al v. James E. McKinney, et al.,** Supreme Court Docket number 89-1558, certdenied, 58 U.S. L.W. 3750, U.S. May 29, 1990.

The issues presented to this Court for review at this point can be found on page i.

I. Reasons For Granting The Writ

Petitioners attorney, Morris S. Dees suborned and encouraged his witnesses to commit perjury in the trial of this case and capitalized on this perjury in his closing argument to the jury.

Respondents attorney, Morris Dees is a nationally known civil rights attorney. Mr. Dees in presenting his case called 25 witnesses to testify. Two of these witnesses, (his most important witnesses,) have come forth and admitted under Oath, to having committed perjury against these petitioners, at the encouragement of Mr. Dees. See Mr. William Mark Mize's affidavit which is in the appendix marked as exhibit "A". See also the sworn deposition of Mathew Bruce Ray, which is attached to Petitioners Brief which was filed in the Eleventh Circuit Court of Appeals.

Specifically, page 13 of Mr. Ray's deposition, Mr. Ray admits to committing perjury. Mr. Ray, by trade is a printer who has printed literature for the Ku Klux Klan for some years. Vol. 5, page 601. Mr. Ray, on page 14 of this deposition stated one of the reasons that he committed perjury was because of the pressure that was exerted on him by the investigator who is employed by the Southern Poverty Law Center. (Mr. Dees is the Executive Director of this operation.)

On page 14 of Mr. Ray's deposition, questioning by Petitioner Holland went as follows:

Q: Do you think one of the reasons, do you think and feel one of the reasons that you testified falsely at the trial was because of the pressure that was put on you and your family by the investigators of the Southern Poverty Law Center ?

A: Yes, Sir.

Mr., Ray's testimony at the trial of this case destroyed the testimony of Petitioner Holland and Michael Eddington, Vol. 5, page 602. Mr. Eddington testified via a video taped deposition. A transcript of Mr. Eddington's testimony is attached to Respondents "Supplement The Record On Appeal." Mr. Eddington testified that he, Eddington, had Dacula Rapid Press, the company in which Mr. Bruce Ray is part owner, print some particular Ku Klux Klan stickers, Page 72 of Mr. Eddington's testimony. Mr. Ray denied, at the encouragement of Morris Dees, that he printed the stickers. Vol. 5, page 602.

Petitioner Holland testified that Dacula Rapid Press and Bruce Ray has in fact printed the Ku Klux Klan stickers, Vol. 5, page 558, 559. Again, Mr. Ray, at the encouragement of Morris Dees and his entourage, denied this. Vol. 5, page 605.

Later in Mr. Ray's deposition, he blatantly admits that he committed perjury in this case when he denied printing the sticker. See Ray's deposition at 7. The testimony of Mr. Ray, who was not a party to this action, obviously convinced the jury that Petitioner Holland and Mr. Eddington were testifying falsely when Mr. Ray denied printing the sticker.

Mr. Dees, in his summation to the jury, capitalizing on this perjured testimony stated: *"And Mr. Ray that got on the stand, a business man in the community. . . the man got on the stand and told you he didn't print the decal, what else can he say?"* Vol. 12, page 1558. This fraud and perjury that Mr. Dees perpetrated upon the district court and the jury has defiled the court and slaps the face of justice. Such egregious conduct should not be tolerated in a just society.

Mr. Mize, another witness called to testify by Mr. Dees testified extensively how he was coerced into committing perjury in depositions and affidavits at the encouragement of Morris Dees and his investigator, Joe Roy. See Mize affidavit, exhibit "A", in which Mr. Mize gave these Petitioners in an attempt to have this judgement reversed in the Eleventh Circuit Court of Appeals.

Messrs. Mize and Ray have made it perfectly clear that they intentionally attempted to defraud the court, at the encouragement of Morris Dees. This Court in Minneapolis, St. Paul & S.S. Marine Ry. Co. v. Moguin, 283 U.S. 520, 521,22 stated:

> A litigant who has engaged in misconduct is not entitled to the benefit of calculation, which can be little better than speculation, as to the extent of the wrong inflicted upon his opponent.

The Eleventh Circuit Court of Appeals has adopted this theory of law, but this Circuit failed to apply it, in this particular case.

In a case strikingly similar to this case, the Eleventh Circuit Court of Appeals reversed a conviction when it was revealed that the government used perjured testimony and also when the prosecutor capitalized on this perjury in her closing argument. The Eleventh Circuit said, "As long ago as Mooney v. Holohan, 294 U.S. 103 (1935) this court made clear that the deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.' This was reaffirmed in Pyle v. Kansas, 317 U.S. 213 (1942). In Napue v. Illinois, 360 U.S. 264 (1959), we said 'the same result obtains the state, although not soliciting false evidence, allows it to go uncorrected when it appears. Id at 269." DeMarco v. United States, 928 F. 2d 1074 (1991).

Also, the district court erred in refusing to grant these Petitioners a new trial because of the perjured testimony.

> A new trial should be granted when (a) the court is reasonably well satisfied that the testimony given by a material witness is false; (b) that without it the jury might have reached a different conclusion; (c) that the party seeking the new trial was surprised when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.
>
> Martin v. United States, 17 F. 2d 973, 976 (5th Circuit 1927) cer denied 115 U.S. 527 (1927).

If it is found that there was fraud on the court, the judgement should be vacated, and the guilty party denied all relief. Hazel Glass Co. v. Hartford Empire Co., 322 U.S. 238, 250-51 (1944). The testimony of Messrs. Mize and Ray undercut the testimony of the Petitioner Holland and Eddington, and the Respondents agree to this. See Respondents brief that was filed in the Eleventh Circuit at 7.

These Petitioners are entitled to relief since the evidence is such that it is likely to produce a new outcome if this case was retried, or is such that would require the judgment to be amended. Scutierio v. Paige, 808 F. 2d 785, 793 (11th Circuit 1987); Hunnicutt v. Bd. of Regents of University Sys. of Ga., 122 F.R.D. 605, 07 (M.D. Ga. 1988) 11 C. Wright & Miller, Fed. P. & Proc. section 2859 (1973).

II. The Eleventh Circuit Court of Appeals Erred In Refusing To Recuse Themselves Because Of Their Bias And Impartiality Towards These Petitioners.

The Eleventh Circuit Court of Appeals erred in refusing to recuse themselves from this case. In requesting that the judges on this circuit recuse themselves, the Petitioners alleged that because white supremacists, particularly, the Ku Klux Klan groups in the state of Georgia were suspected by the Federal Bureau of Investigation of being the responsible parties for the tragic death of their colleague, Robert S. Vance, who was an active judge on this circuit. Judge Vance was violently murdered when he opened a package that was in fact a mail bomb. The Ku Klux Klan was, at first, the primary target of this investigation. The largest newspaper in the southeast, the Atlanta Journal carried numerous stories stating that via reliable sources, the United States Department of Justice was investigating the Ku Klux Klan and their members. Two (2) of these Petitioners were questioned by the FBI.

In requesting that the Eleventh Circuit Court of Appeals recuse themselves, these Petitioners relied upon 28 U.S.C. 455 (a) which says:

> Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned.

The purpose of 28 U.S. C. 455 (a) is to promote public confidence in the integrity of the judicial process. No reasonable person would think that after the organization in which all of these Petitioners are either active or former members of, was suspected of murdering their friend and colleague Robert S. Vance, that they would receive a fair and impartial hearing.

This court in Liljeberg v. Health Services Corp., 108 S. Ct. 2194, 2202-03 (1988) in adopting the language of Judge Clark of the Fifth Circuit (now the Eleventh Circuit) stated:

> The goal of section 28 U.S.C. 455 (a) is to avoid even the appearance of partiality. If it would to a reasonable person that a judge has knowledge of litigation then the appearance of impartiality is created even through no actual partiality exists because the judge actually has no interest in the case because the judge is pure in heart and incorruptible. . . under section 455 (a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person knowing all the circumstances, that would expect that the judge would have actual knowledge.
>
> Liljeberg supra at 872, 873.

This circuit, specifically Judge Thomas Clark, who has been on each and every panel that has denied these Petitioners any relief was one of the judges that authored an outrageous decision in the case of McMullen v. Carson, 754 F. 2d 936 (11th Circuit 1985), this biased decision labeled all Ku Klux Klan groups as criminals. Clearly, judge Clark does not practice what he preaches.

> Two critical factors surface in this case: The first two involves what this record shows as to the nature, both actual and perceived, of the Klan as a violent criminal and racist organization. . .

With the above in mind, Judge Clark has already formed an opinion that these Petitioners are criminals. Judge Clark specifically refused to recuse himself. See exhibit " B ".

In another case that involved the Ku Klux Klan, United States v. White, 846 F. 2d 678 (11th Circuit 1983), the district court judge presiding over that case was removed by the Eleventh Circuit Court of Appeals after he made several rulings in favor of the Klanspeople involved. The Eleventh Circuit stated that Judge Acker had become "*hardened*" against the government, at 696. Judge William Acker, in a lengthy opinion on being removed from the White case, In Possible Recusal Of William Acker, Jr., 696 F. Supp. 591 (N.D. Ala. 1988), Judge Acker stated at 596 that the reason for his removal from the Klan case was because this judge was biased against the government because of his favorable rulings for the ku Klux Klan.

III. The Eleventh Circuit Court of Appeals Substituted Their Own Findings For Those Of The District Court.

Judge Acker quoting from this court's case of Amadeo v. Zant, 108 S. Ct. 1771-79 hit the nail on the head when he, and this Court described the Eleventh Circuit's attitude when they decide a case in which they are biased against the defendants.

> Without examining the record or discussing its obligations under Rule 52 (a), the court (referring to the Eleventh Circuit Court of Appeals) simply expressed disagreement and substituted its own findings for those of the District Court.

The Eleventh Circuit Court of Appeals made its own finding in this case and disregarded the record completely when it stated in its opinion "*Though the four persons who are appellants here apparently did not throw rocks or bottles in the direction of the marchers.* . . ." No where in the record, or any brief filed is it even alleged that these Petitioners threw anything in any direction - - this is outrageous.

In the trial of Walter Leroy Moody, the individual who was subsequently indicted and convicted of murdering Judge Vance, the special prosecutor of this horrible and cowardly crime - Mr. Freech stated:

> Mr. Moody is a racist. He wouldn't go to a Klan rally; he's not an ideological racist; its just that he cared nothing for Mr. Robinson or black people and he knew the FBI would run straight for the KKK and all the White Supremacists. And that's what they (FBI) did at first.
>
> See exhibit "C" which is an article that appeared in the Atlanta Journal/Constitution, June 27, 1991.

The Eleventh Circuit could not have given these Petitioners a fair and impartial hearing on their appeal in this case and for this reason alone, this Court should grant this writ, and remand this case back for further proceedings before a different panel of judges from another Circuit or back to the District Court, and again, to a different judge.

CONCLUSION

For all of the foregoing reasons set forth above, this Court should grant this petition for writ of certiorari, and review the decision of the Court of Appeals for the Eleventh Circuit, simply because of the circumstances surrounding this particular case and other cases involving the Ku Klux Klan in this Circuit and the Eleventh Circuit's decision concerning these groups, and the Respondents complaint be dismissed, or in the alternative, remand this case back to another district court so that these Petitioners can receive a fair and impartial trial.

Pro Se pleadings are to be "*liberally construed*" and "*must be held to less stringent standards than formal pleadings drafted by lawyers.*" Estelle v Gamble, 429 U.S. 97 (1976)

This the _____ day of September, 1991.

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Appendix

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-8512
Non-Argument Calendar

D. C. Docket No. 1:87-cv-565-CAM

JAMES E. McKINNEY, et al.,
Plaintiffs-Appellees,

versus

SOUTHERN WHITE KNIGHTS, KNIGHTS OF THE KU KLUX KLAN, et al.,
Defendants,

DANIEL CARVER, DAVID HOLLAND, FRANK SHIRLEY, EDWARD STEPHENS,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Georgia

---

(May 6, 1991)

Before CLARK, COX and DUBINA, Circuit Judges.

PER CURIAM:

The appellants in this case appeal from the district court's denial of their motion to vacate judgement filed pursuant to Fed. R. Civ. P. 60(b). On appeal, our review is limited to whether the district court abused its discretion in denying the Rule 60(b) motion. Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984). Since our review of this case persuades us that the district court did not abuse its discretion when it denied the appellants' Rule 60 (b) motion, we affirm the order of the district court.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-8512

HOSEA WILLIAMS, ETC., Plaintiff

JAMES E. MCKINNEY,
individually and on behalf of all black citizens of the state of Georgia, Plaintiff-Appellee,

versus

SOUTHERN WHITE KNIGHTS, KNIGHTS OF THE KU KLUX KLAN., ETC., ET AL,

Defendants,

DAVID HOLLAND,
individually and as Grand Dragon of the Southern White Knights, Knights of the Ku Klux Klan, Inc.,
DANIEL CARVER,
as Grand Dragon of the Invisible Empire, Knights of the Ku Klux Klan, Inc.,
EDWARD SHIRLEY and
MARION FRANKLIN SHIRLEY,

Defendants-Appellants.

On Appeal from the United States District Court for The Northern District of Georgia

O R D E R :

Appellant's motion that the undersigned recuse himself from participating in this appeal en banc is DENIED.

UNITED STATES CIRCUIT JUDGE

THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 90-8512

JAMES E. MCKINNEY, et al., - Plaintiffs-Appellees,

versus

SOUTHERN WHITE KNIGHTS, KNIGHTS OF THE KU KLUX KLAN, et al.,

DANIEL CARVER, DAVID HOLLAND, - Defendants
FRANK SHIRLEY, EDWARD STEPHENS.
Defendants-Appellants

On Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion May 6 ,11the Cir., 1991 - F.2d)

Before: CLARK, COX and DUBINA, Circuit Judges

PER CURIAM:

(✓) The petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), The Suggestions(s) of Rehearing En Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

ORD-42
(9/90)

(2)

No. 91-931

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1991

EDWARD STEPHENS ; DAVID WAYNE HOLLAND; DANIEL B. CARVER, SR.; and MARION FRANKLIN SHIRLEY, JR.,

Petitioners,

v.

JAMES E. McKINNEY, *et al.,*

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. RICHARD COHEN
Post Office Box 2087
Montgomery, AL 36102
(205) 264-0286

QUESTIONS PRESENTED

I. WHETHER THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT'S ORDER DENYING PETITIONERS' RULE 60(b) MOTION TO VACATE JUDGMENT CALLS FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWERS.

II. WHETHER PETITIONERS HAVE TIMELY RAISED ANY OTHER ISSUES FOR THIS COURT'S CONSIDERATION.

PARTIES

Edward R. Stephens ..... Defendant-Petitioner
David W. Holland .....Defendant-Petitioner
Daniel B. Carver, Sr. ..... Defendant-Petitioner
Marion Franklin Shirley, Jr. ..... Defendant-Petitioner
The Southern White Knights, Knights
of the Ku Klux Klan ..... Defendant
The Invisible Empire, Knights of the
Ku Klux Klan .....Defendant
Gregory Allen Boyd .....Defendant
Joe Thomas Stewart ..... Defendant
Tony DeWayne Rich ..... .Defendant
Earl Watts .....Defendant
Douglas McGinnis .....Defendant
Harold Palmour ..... . Defendant
Roy James Sweatman .....Defendant
Thomas James Gayton ..... Defendant
James E. McKinney ..... .Plaintiff-Respondent
All other plaintiff class members .... . Plaintiff-Respondent

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JURISDICTION

On May 6, 1991, the Eleventh Circuit Court of Appeals affirmed the decision of the district court to deny petitioners' Rule 60(b) motion to vacate judgment. Two days later, petitioners filed a suggestion of rehearing en banc. It was treated as a petition for rehearing by the Eleventh Circuit and was denied on June 19, 1991. Petitioners filed their petition for writ of *certiorari* on September 16, 1991.

The portion of petitioners' application for a writ that addresses the denial of their Rule 60(b) motion was timely filed. The portion of the application that relates to the denial of their motions to recuse every judge of the Eleventh Circuit from deciding their suggestion for rehearing en banc and to recuse Judge Clark specifically cannot be considered by this Court under 28 U.S.C. §2101(c) because those motions were denied on May 21 and 22, 1991 respectively, more than ninety days prior to the filing of this petition for writ of *certiorari*.

FEDERAL STATUTES

28 U.S.C. §2101(c) -- Supreme Court; time for appeal or *certiorari*; docketing; stay

Any other appeal or any writ of *certiorari* intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of *certiorari* for a period not exceeding sixty days.

STATEMENT OF THE CASE

This is the second petition for a writ of *certiorari* [1] that petitioners have filed since judgment was entered against them on November 3, 1988. The first petition followed the Eleventh Circuit's affirmance of the judgment. It was denied. *Stephens v. McKinney,* 110 S. Ct. 2563, 109 L.Ed.2d 745 (1990). This one follows the Eleventh Circuit's *per curiam* affirmance of the district court's denial of petitioners' Rule 60(b) motion to vacate judgment.

The case arose out of injuries suffered by a small bi-racial group of adults and children who were the victims of an organized assault by white supremacists. On January 17, 1987, respondents gathered to participate in a peaceful civil rights march in Forsyth County, Georgia to commemorate the birthday of Martin Luther King. Shortly after they began their march, they were attacked by about one hundred robed and plainclothes Klansmen who pelted them with rocks and bottles while screaming racial epithets, obscenities, and threats. When law enforcement officers felt they could no longer safeguard respondents from the violent

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[1] Petitioners filed their first petition for writ of *certiorari* on April 3, 1990 after the Eleventh Circuit Court of Appeals affirmed the judgment of the district court, entered upon a jury verdict, in favor of plaintiffs. *Williams v. Southern White Knights,* No. 89-8092 (11th Cir. Oct. 27, 1989)(*per curiam*).

throng, they were forced to halt the march. Respondents brought suit under the Ku Klux Klan Act of 1871, 42 U.S.C. §1985(3), alleging that petitioners and others had conspired to deprive them of their civil rights. They presented a wealth of evidence to prove that petitioners and their cohorts had orchestrated a specific plan to disrupt the march and prevent respondents from advocating the cause of racial harmony.

The jury found that the evidence proved the existence of an unlawful conspiracy and awarded respondents compensatory and punitive damages. The district court entered the verdict as its judgment on November 3, 1988. One year later, the court of appeals affirmed the judgment of the district court. *Williams v. Southern White Knights,* No. 89-8092 (11th Cir. Oct. 27, 1989)(*per curiam*). The Supreme Court denied *certiorari* in May of 1990. *Stephens v. McKinney,* 110 S.Ct. 2563, 109 L.Ed.2d 745 (1990).

On January 3, 1990, more than one year after entry of the judgment, petitioners filed an untimely Rule 60(b) motion for an order vacating the judgment against them. They alleged that they had newly-discovered evidence that probably would have changed the outcome of the trial. The "evidence" was in the form of a sworn statement petitioner Holland obtained from Mathew Bruce Ray fourteen months after trial. The statement contained an acknowledgment by Ray that, contrary to his testimony at trial, he had printed some racist decals for the Klan at some point before or after the Forsyth County march. Although petitioner Holland tried hard to put words in Ray's

mouth to the effect that he had intentionally perjured himself at the behest of plaintiffs' counsel and his chief investigator, Ray repeatedly denied having been requested to commit perjury. In fact, he stated that neither plaintiffs' trial counsel nor the investigator knew that the testimony he gave on the stand was false. Ray also made it clear that he had not deliberately lied, but rather that he had merely been confused about some terminology related to the printing jobs.

The trial court denied petitioners' motion to vacate judgment because they had failed to meet their burden of proof under Rule 60(b) and relevant case law. *McKinney v. Southern White Knights,* No. 87-565 (N.D.Ga. May 10, 1990)(order denying motion to vacate). Most, if not all, of the criteria necessary to establish entitlement to relief from judgment on the grounds of newly-discovered evidence were not satisfied. The evidence of Ray's inaccurate testimony, for example, was brought to light during the trial itself, and petitioners were expressly given the opportunity to recall Ray to the stand to correct the record. The fact that they knew of the inaccuracy while the trial was still in progress vitiated their subsequent claims that the evidence was "new" and could not have been discovered in time to move for a new trial. In addition, there was nothing in Ray's testimony, in either its corrected or incorrect form, that would have substantially undercut the considerable evidence of a conspiracy that was presented at trial.

When the district court denied their Rule 60(b) motion to vacate the judgment, petitioners appealed to the Eleventh Circuit court of appeals. The panel assigned to the appeal consisted of Judges Clark, Cox, and Dubina. They affirmed the denial of the motion on May 6, 1991 under an abuse-of-discretion standard. Petitioners then filed a suggestion for rehearing en banc, which they promptly followed with a motion to recuse all members of the Eleventh Circuit court of appeals and a separate motion to recuse Judges Clark and Roney in particular from ruling on their petition. The motions to recuse were denied on May 21 and 22, 1991. The suggestion for rehearing en banc, which the Eleventh Circuit treated as a petition for rehearing, was denied on June 19, 1991. Petitioners filed their application for a writ of *certiorari* on September 16, 1991.

ARGUMENT

I. INTRODUCTION

The petition should be denied because it does not meet any of the requirements for this Court's discretionary review under Supreme Court Rule 10.1. It implicates no federal questions. It reflects no departure from the accepted and customary course of judicial proceedings. In fact, the only question presented that even meets the timeliness requirements

of Rule 13.1 concerns a routine procedural ruling that was reviewed and upheld under an abuse of discretion standard.

II. THE CLAIM THAT THE COURT OF APPEALS SUBSTITUTED ITS OWN FINDINGS FOR THOSE OF THE DISTRICT COURT IS UTTERLY WITHOUT FOUNDATION.

In making the assertion that the Court of Appeals for the Eleventh Circuit court substituted its own findings for those of the district court, petitioners have not only distorted the record, they have completely misunderstood the role of courts in our governmental system. First, the United States Supreme Court is not a proper place for obtaining redress for perceived judicial insults. Second, their belief that they were impugned by any part of the Eleventh Circuit court's fourteen-page opinion is discredited entirely by a reading of the opinion. Third, the sentence at which they have taken offense is not a "substituted finding." It reads: "Though the four persons who are appellants here apparently did not throw rocks or bottles in the direction of the marchers, two other defendants stated that the encouragement of Stephens and Holland prompted them to hurl rocks at the marchers."

Petitioners apparently interpret the statement as an assertion by the circuit court that they were, in fact, active

assailants during the mob attack they organized on the Forsyth County freedom marchers. The language of the sentence itself speaks otherwise. Even if petitioners had not misconstrued the meaning of the words in the court's decision, however, and even if the court **had** stated that these petitioners threw rocks at the marchers **instead of urging others to do so,** there would be no basis for granting *certiorari.*

Moreover, the sentence that petitioners half quoted in their petition was lifted from the Court of Appeals' opinion affirming the judgment of the trial court issued on December 14, 1989. Even were there an issue calling for judicial resolution, petitioners could not raise it now.

III. THE ISSUE OF WHETHER THE ENTIRE ELEVENTH CIRCUIT COURT OF APPEALS OR ANY INDIVIDUAL MEMBER THEREOF SHOULD HAVE BEEN DISQUALIFIED FROM HEARING PETITIONERS' SECOND APPEAL HAS NO MERIT AND WAS NOT TIMELY RAISED.

On June 8, 1990, petitioners filed a motion to recuse "all present and former members" of the Eleventh Circuit court from hearing an expected appeal of the denial of their Rule 60(b) motion to vacate. They premised that first recusal motion on the grounds that the murder of Judge Vance

might harden the remaining circuit judges against white racists. The motion was denied on June 11, 1990. After the panel assigned to hear the appeal affirmed the district court's denial of their Rule 60(b) motion, petitioners filed a suggestion of rehearing en banc. They followed that closely with another motion to recuse "each and [e] every judge of [the Eleventh] circuit." As grounds for their second motion, petitioners claimed that certain of the judges -- specifically Judges Clark and Roney -- had "clearly expressed a hatred for people associated with the Ku Klux Klan." To support that claim, petitioners quoted some language from an Eleventh Circuit opinion authored by Judge Roney and joined in by Judges Clark and Moore.

Petitioners' second motion to recuse every circuit judge was denied on May 21, 1991. Their separate motion to recuse Judge Clark was denied on May 22, 1991. Supreme Court Rule 13.1 requires a petition for writ of *certiorari* to be filed within ninety days after entry of the order sought to be reviewed. Because the 90-day time limit is "mandatory and jurisdictional," *Missouri v. Jenkins,* 495 U.S. 33 (1990), the issue is time-barred.

In any event, the question lacks merit. The case petitioners cited in support of their claim of judicial bias, *McMullen v. Carson,* 754 F.2d 936 (11th Cir. 1985), involved a First Amendment claim by an at-will employee who had been discharged from his job as a deputy sheriff when his active participation in local Klan activities began to interfere with the

ability of the sheriff's office to enforce law in the local community. A thorough reading of the case establishes that the court carefully reviewed the factual findings of the lower court and premised its affirmance on what the uncontested evidence in the case had shown. Petitioners may take umbrage at the fact that the Klan group in that case was characterized as a "small group of violent extremists who are imbued with fanatic dedication to racist ideas," *McMullen,* 754 F.2d at 938, but, according to the district and appellate courts, the record in the *McMullen* case called for such findings. The record in the instant case certainly does not paint a different picture.

Judges whose opinion and perception are molded by the evidence before them are not required to disqualify themselves from hearing other cases involving similar parties or claims. *United States v. Grinnell Corp.,* 384 U.S. 563, 583 (1966)(bias sufficient to disqualify a judge must stem from an extrajudicial source). Unless a party can demonstrate that a judge harbors a personal bias that would preclude his sitting as a neutral and detached decision-maker in a given proceeding, there is no basis for recusal. *See Davis v. Board of School Commissioners of Mobile County,* 517 F.2d 1044, 1051 (5th Cir. 1975), *cert. denied,* 425 U.S. 944 (1976). In this instance, petitioners have not produced any evidence of "pervasive bias and prejudice" that would have warranted the disqualification of Judge Clark as a member of the panel sitting on their Rule 60(b) appeal.

Although the denial of petitioners' motions to recuse would not call for an exercise of this Court's supervisory powers in any event, the Court lacks jurisdiction to consider the issue because the judgment sought to be reviewed was entered more than ninety days before the application for a writ of *certiorari* was filed. Their last motion to recuse every circuit judge was denied on May 21, 1991. Their separate motion to recuse Judge Clark was denied on May 22, 1991. Because the 90-day time limit is "mandatory and jurisdictional," *Missouri v. Jenkins*, 495 U.S. 33 (1990), the issue is time-barred.

IV. THE TRIAL COURT'S DENIAL OF PETITIONERS' MOTION TO VACATE JUDGMENT WAS PROPER, AND THE COURT OF APPEALS' REVIEW OF THAT PROCEDURAL RULING WAS MADE UNDER THE APPROPRIATE STANDARD OF REVIEW.

Because the petitioners have flooded the courts with motions, petitions, and appeals ever since judgment was entered against them in November 1988, [2] it is important to

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[2] Although by no means an exhaustive list of the post-judgment pleadings petitioners have filed, the following gives some idea of the manner in which the petitioners are using the system. In the three years that have elapsed since judgment was entered against them, petitioners have filed two appeals to the Eleventh Circuit;

note that the order whose review petitioners now seek is the one entered by the Eleventh Circuit on May 6, 1991. That order upheld the district court's denial of a Rule 60(b) motion to vacate judgment that was predicated on one issue alone -- whether the judgment against the petitioners had been obtained through fraud upon the court. Petitioners asserted that plaintiff's chief trial counsel had suborned perjury.

A charge of fraud upon the court is extremely serious and should not be recklessly made. *Cleveland Demolition Co., Inc. v. Azcon Scrap Corp.*, 827 F.2d 984 (4th Cir. 1987). Because it threatens the reputation and the livelihood of an officer of the court, and because it constitutes such a potent weapon in the hands of an unscrupulous and unethical adversary, courts require proof of such allegations by clear and convincing evidence. *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir. 1978). The only "evidence" that petitioners offered to the district court in support of their motion was the transcript of an oral statement that petitioner Holland managed to obtain from Mathew Bruce Ray, a Klan sympathizer, approximately fourteen (14) months after trial.

The Ray statement actually is most notable for its utter lack of support for petitioners' thesis. Not only does Ray

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two petitions for writ of *certiorari* with the United States Supreme Court; two Rule 60(b) motions, both untimely; four motions to recuse some or all of the members of the Eleventh Circuit bench from hearing their appeals and motions; a suggestion of rehearing en banc; and numerous motions directed towards halting post-judgment discovery and collection.

affirmatively deny that plaintiff's trial counsel suborned perjury, he even denies that he intentionally perjured himself. [3] Mr. Ray makes it clear that his false statements were merely the product of uncertain and faulty recollection. From this shaky base, however, petitioners have sought to topple the judgment against them. The trial court correctly ruled that they had failed to meet their burden of proof under Federal Rule of Civil Procedure 60(b) and relevant case law. [4]

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[3] Although petitioner Holland tried hard to get Mr. Ray to state that plaintiffs' lawyer or one of plaintiffs' investigators persuaded him to testify falsely, Mr. Ray repeatedly stated that he was not encouraged to testify falsely, and that no member of the trial team representing the plaintiffs knew that his testimony on the stand had been false. Mr. Ray stated that he did not realize that he had been mistaken about his recollection until after he searched through records at his shop and discovered the printing plates showing that he had indeed printed a particular Klan sticker. *See Statement of Mathew Bruce Ray* (Appendix A).

[4] Because the petitioners are relentless in their efforts to tie up the court system with endless motions and appeals and to prevent respondents from closing out this case, they later submitted to the Eleventh Circuit an affidavit made almost twenty months after trial by a Klansman, William Mark Mize, who had already recanted his pre-trial deposition testimony during trial. Mr. Mize has the dubious distinction of having sworn to two different lawyers in two separate depositions that he was telling the complete truth without fear or hope of gain, only to subsequently swear that he had lied about all sorts of very specific details, all because plaintiffs' chief trial counsel, who has no authority with or control over any penal system, had allegedly promised him an early release from prison. Mr. Mize's latest oath is merely duplicative of the testimony he gave at trial which was controverted by that of his wife, among others. Even if it were credible, therefore, it would not constitute "newly-discovered evidence."

Even had Mr. Ray intentionally committed perjury, petitioners have failed to meet their burden of establishing fraud upon the court. "A verdict may be set aside for fraud on the court [only] if an attorney and a witness have conspired to present perjured testimony." *Cleveland Demolition Co., Inc. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir. 1987). "[C]ourts confronting the issue have consistently held that perjury or fabricated evidence are not grounds for relief as 'fraud on the court.'" *Great Coastal Express, Inc.. v. International Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir. 1982)(*citation omitted); accord Addington v. Farmers Elevator Mutuai Ins. Co.*, 650 F.2d 663 (5th Cir.), *cert. denied*, 454 U.S. 1098 (1981); *Kupferman v. Consolidated Research & Mfg. Co.*, 459 F.2d 1072 (2d Cir. 1972). Because there was no credible evidence of a conspiracy between plaintiffs' counsel and any witness, there were no grounds for disturbing the finality of the judgment against petitioners. The district court's denial of the motion to vacate the judgment was, therefore, amply justified.

The function of the Eleventh Circuit in considering the appeal from the district court's denial of the motion to vacate was to determine whether the lower court had abused its discretion in denying the motion. *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984). An abuse-of-discretion standard of review is extremely limited; the role of appellate courts is merely to determine whether the judgment under review is "arbitrary, capricious, whimsical, or manifestly

unreasonable." *United States v. Cardenas,* 864 F.2d 1528, 1530 (10th Cir. 1989). If the trial court applied the appropriate standards in evaluating petitioners' Rule 60(b) motion, then its judgment would clearly not constitute an abuse of discretion.

In this case, the trial court set forth each of the criteria that had to be satisfied in order to obtain relief under Federal Rule of Civil Procedure 60(b) on the grounds that petitioners were asserting. *See McKinney v. Southern White Knights,* No. 87-565 (N.D.Ga. May 10, 1990)(order denying motion to vacate). The Eleventh Circuit concluded that the district court's ruling was not unreasonable or improper under the law. That was the extent of its duty, and petitioners have failed to show that the circuit court's affirmance of that judgment was in any way incorrect.

CONCLUSION

Petitioners are simply attempting to do again what they tried unsuccessfully to do the last time they were before this Court -- relitigate factual issues that have been decided against them. They have failed to present a single issue that calls for the exercise of this Court's discretionary review. For that reason, respondents urge the Court to deny the petition for writ of *certiorari*.

Respectfully submitted,

J. Richard Cohen /by AvA

J. Richard Cohen
Counsel of Record

Abigail P. van Alstyne
Post Office Box 2087
Montgomery, AL 36102-2087
(205) 264-0286

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing by first class mail, postage prepaid, on Edward Stephens, 1735 Fielders Road, Jonesboro, Georgia 30236; Dave Holland, 2657 Kings Way, Lawrenceville, Georgia 30244; Daniel Carver, P.O. Box 446, Oakwood, Georgia 30566; and Marion Shirley, P.O. Box 1232, Cumming, Georgia 30130 on this 9th day of January, 1992.

_____

Attorney for Plaintiffs

Appendix A

Sworn statement of MATHEW BRUCE RAY, taken by David Holland, before Robin Bloodworth, Certified Court Reporter and Notary Public, at 368 Pike Street, Lawrenceville, Georgia, on the 29th day of November, 1989, commencing at the hour of 2:45 o'clock, p.m.

WEST COURT REPORTING
368 PIKE STREET
P. O. BOX 854
LAWRENCEVILLE, GEORGIA 30246-0854
PHONE: (404) 963-0003

INDEX TO EXHIBITS

Mr. Holland: This is the sworn statement of Mathew Bruce Ray, taken on November 29.

MATHEW BRUCE RAY,

being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HOLLAND:

Q For the record, would you state your name, Bruce?

A Mathew Bruce Ray.

Q And your place of business?

A Dacula Rapid Press.

Q How long have you been working there?

A Ten years.

Q You are a part owner?

A Yes.

Q Are you married?

A Un-huh.

Q Have you ever been arrested for anything?

A D.U.I., I think.

Q Do you know a man by the name of Morris Deese?

A Yes.

Q Did you ever meet him?

A Yes, sir.

Q Did you meet him at the Federal Courthouse in Atlanta, Georgia during the Hosea Williams, Ku Klux Klan trials?

A Yes.

Q Is that the only time you ever talked to him?

A He may have called me on the phone after the trial but I couldn't tell you for sure, or during the trial.

Q Do you know a man by the name by J. T. Roy or Joe Roy?

A Yes, sir.

Q How many times did you talk to him?

A About a dozen.

Q Before the trial?

A Before and during.

Q Didn't Joe Roy call you late one night the first time you ever met him?

A Yes.

Q And asked to come down to your place of business?

A Right.

Q What did he ask you when you got there?

A He asked us if we had done any printing for you, Dave Holland, or any of the Klan members.

Q Would you look at that picture?

Is that the Joe Roy we are talking about?

A Yes.

(Whereupon, Exhibit A was marked for identification by the Court Reporter.)

By Mr. Holland:

Q Do you know a man by the name of D. K. Welch?

A No, sir.

Q Or Dick Welch?

A The name's not familiar to me.

Q Did Joe Roy tell you he was employed by Morris Deese?

A Yes, sir.

Q Did he ever bring anyone with him when he came to see you?

A No, sir.

Q He always came by himself?

A Right.

Q And you testified at the Hosea Williams versus Ku Klux Klan trial during the month of September 1988?

A Right.

Q Who called you to testify?

A Morris Deese.

Q And he subpoenaed you?

A Yes, sir.

Q Did Joe Roy or Morris Deese ever talk to Evelyn Nickles to your knowledge?

A Yes. sir; Joe Roy did.

Q How many times?

A About three.

Q Do you know the contents of these conversations?

A Just one, wanting to know about printing that we had done for the Klan.

Q And Evelyn Nickles, that's your aunt, isn't it?

A Right.

Q When Joe Roy called you at home didn't he tell you it was an emergency, he needed to talk to you?

A Right. He said he came from Alabama and was only going to be in town for like two days and needed to get some information about some printing that we done for the Klan so he could go back.

Q Did Joe Roy ever show you any type of a badge, like a private investigator's badge?

A No.

(Whereupon Exhibit B was marked for identification by the Court Reporter.)

BY MR. HOLLAND:

Q This sticker here, this is Decal B; have you ever seen that before?

A Yes, sir.

Q Did you print that?

A Yes, sir. I printed that for you sometime the year before.

Does that sound correct?

Q Can you state for a fact that that sticker was printed before or after that first march in January of 1987, which was the subject of that lawsuit in Atlanta.

A I couldn't tell you either way. All I know is we did print it.

Q Does it take any type of special printing equipment to print a sticker?

A No.

Q Just special paper?

A Yes, just the sticker paper.

When Morris Deese came to us the first time he asked my father if we printed any decals, which is a different process all together, and my father told him we did not print decals because we did not have the equipment to do that, but that was just some bad communication.

Q These two stickers here which will be marked C and D, did you print those, Bruce?

A Yes, sir.

(Whereupon, Exhibits C and D were marked for identification by the Court Reporter.)

BY MR. HOLLAND:

Q Or some similar to those?

A It seems like we printed this the same time we did the other one, seems like it, but I can't tell you for sure. It's not the same paper though, but, yes, something similar to this.

Q How long has Dacula Rapid Press been able to print stickers? I would assume as long as you have had printing machines?

A Yes.

Q For at least ten years?

A (Witness nods head affirmatively.)

Q You have printed decals for several Klan groups over a number of years?

A Crack and peel stickers, right. A decal is a different term; it's a different kind of printing.

Q Did Joe Roy or anybody else with the Southern Poverty Law Center or people employed by Morris Deese, did they ever threaten you with physical violence?

A No.

Q Did Joe Roy, Morris Deese or any employee of the Southern Poverty Law Center ever insinuate to you, your aunt or your father, that you were going to be made part of this case?

A Yes. I couldn't tell you the specifics of it, just exactly how it came about, but they made us understand we would be in some kind of trouble if we didn't cooperate with them.

Q Sam Dixon called you and talked to you about your testimony in Atlanta, didn't he?

A Right.

Q I may be mistaken, but didn't Sam tell you if they sued you he would represent you free of charge?

A Correct.

Q What did Joe say to you?

I know it's been a long time, Bruce, but do you know what he said to you otherwise insinuating you could be made part of the case?

A I really don't remember what he said. I remember that my aunt was really upset about it and my dad was, too.

Q But from the contents of the conversation that you interpreted, Joe led you to believe that Dacula Rapid Press could be made part of the conspiracy to eliminate black people or eliminate black people from Forsyth County?

A Un-huh; prosecute.

Q When you got off and come down to the Federal Courthouse in Atlanta, Morris Deese introduced you to Bill Pagent of the Georgia Bureau of Investigation, didn't he?

A Yes, GBI Task Force was what it was.

Q And this is a terrorist squad?

A Right.

Q What did Morris Deese say to you then?

A He just said this is the GBI Task Force guy, whatever it was, whoever it was.

Q What if anything did Bill Pagent say to you about that?

A He just said we are watching these guys. We are trying to hunt them down and all that.

Q Did Morris Deese ever state to you that he is glad you are working with him or something to that effect?

A He said I am glad you came down here to testify for us, and we will put these guys out of business; something to that effect. I couldn't tell you just exactly.

Q When you testified at the Hosea Williams, Ku Klux Klan trial in September of 1988 you received a call from Sam Dixon, didn't you?

A Right.

Q Shortly thereafter when you spoke to Sam Dixon you told him you were willing to come back and testify again?

A Uh-huh.

Q After that conversation with Sam you received another visit from J. T. Roy, didn't you?

A No, they never came back again; they called me.

Q What did they say, if you remember?

A They said they wanted to talk to me about my testifying, with the fact that Dixon -- is that the guy's name?

Q Sam Dixon?

A Yes. Sam Dixon had talked to me and I told them I wasn't going to talk to anybody else, they could call my

lawyer, and that's what they did. Which I should have said in the first place.

Q The testimony you gave at trial in Atlanta, the Hosea Williams, Ku Klux Klan trial, was that true or false?

A That was false.

Q Has any Klansman up to this day threatened you or your family?

A No, sir.

Q Have we ever attempted, when I say we I am referring to members of the Ku Klux Klan the Invisible Empire and The Southern White Knights, has any member of either two groups ever tempted you or members of your family to testify falsely at any trial?

A No, sir.

Q Did J. T. Roy, an employee of Southern Poverty Law Center in Montgomery, Alabama, did he encourage you to testify falsely at the Hosea Williams, Ku Klux Klan trial?

A I don't think he encouraged me to testify falsely. I think he maybe led us somewhat in our testimony.

Q Did Joe Roy know that the testimony that you were giving at the Hosea Williams, Ku Klux Klan trial in

September of 1988, did he know that that testimony was false?

A No, sir.

Q Joe Roy didn't know if you printed these stickers for a fact?

A No, sir.

Q Did you ever tell Joe Roy you had printed those stickers?

A Prior to the trial?

Q To testifying.

A No, sir.

Q The reason you testified that Dacula Rapid Press did not print those stickers is because of the conversation Joe Roy had with you insinuating that Dacula Rapid Press could be made party to the case?

A Yes, sir.

Q The reason you remember the testimony as being false at the Hosea Williams, Ku Klux Klan trial is that you know for a fact that Dacula Rapid Press printed what I am going to say is a no nigger sticker with a slash through it?

A Right. I later looked back and found the plates and records where we had printed it.

Q Did Morris Deese ever ask you after testifying not to talk to any Klansman?

A I couldn't tell you.

Q Did Joe Roy ever ask or encourage you not to talk to myself or any other Klansman?

A Not to my knowledge.

See, I didn't talk to him after that. Then I just referred him to my attorney.

Q Did you feel threatened and intimidated by these investigators calling you and coming to your place of business?

A Yes, sir.

Q You know about Morris Deese's reputation of suing the Klan prior to testifying?

A Yes, sir.

Q Did you know that Morris Deese had worked for the United States Department of Justice in the past?

A No, sir.

Q Did you know that Morris Deese at one time was a special prosecutor for the United States Government?

A No, sir.

Q Was the testimony in Atlanta, Georgia during September of 1988 in the Hosea Williams, Ku Klux Klan trial perjury on your part?

A Yes, sir, I guess so.

Q Concerning the stickers?

A Concerning the stickers.

Q There is no way that you know for a fact that the first sticker we are referring to, which I am saying the no nigger sticker, was printed before or after the first march in Cumming, Georgia, which was January 17, 1987, do you?

A It was '87?

Q Yes.

A Which was like a-year-and-a-half from the trial; is that right?

Q Correct.

A I couldn't tell you.

Q Did Mike Eddington order those stickers, to the best of your memory?

A To the best of my memory he was the one that brought them in.

Q To the best of your memory I was the one that paid for them, correct?

A Yes, sir.

Q Do you think one of the reasons, do you think and feel one of the reasons you testified falsely at this trial was because of the pressure that was put on you and your family by the investigators at the Southern Poverty Law Center?

A Yes, sir.

Q Today, which is November 29, 1989, is this the first day you ever told me about this false testimony at the Hosea Williams, Ku Klux Klan trial?

A Except for on the phone yesterday.

Q Which would have been November the 28th?

A Right.

Q Did Morris Deese ever lead you to believe that he knew that those stickers were printed prior to the march on January 17, 1987?

A That's what they seem to believe.

Q Did you feel from the conversation that you had with Morris Deese that he knew the testimony that you were giving at the Hosea Williams, Ku Klux Klan trial was false?

A I don't think, I don't feel like they really had an opinion one way or the other. They didn't really know. They just wanted me to testify for them -- I think so.

Q Joe Roy led you to believe that if you did not state those stickers were printed prior to January 17, 1987 that Dacula Rapid Press could me made part of the lawsuit pending in Atlanta?

A That's what I got out of it.

Q And that's the reason for the false testimony in Atlanta, Georgia?

A Yes, sir.

Q Morris Deese never encouraged you to testify one way or the other?

A No, sir. They just -- I am trying to put this in the right words. They said, "Is this true? Is this true? Did this happen? Did this happen?"

They already had it written out and they just wanted us to sign it and say it happened. And they said if we didn't sign the affidavits we would be called to trial.

Q If you didn't sign the affidavits you would be called to the trial, or be part of the trial?

A We took it to understand we would be made part of the allegations.

Q When Sam Dixon spoke to you about the testimony that you gave at the Hosea Williams, Ku Klux Klan trial Sam Dixon made a statement, if I am not mistaken, all he wanted you to testify to was the truth?

A Yes, sir.

Q Regardless of what the truth was?

A Yes, sir.

Mr. HOLLAND: That's all I have.

(Whereupon, the proceedings were concluded.)

JURAT

I have read the foregoing deposition and it is a true and correct transcript of the testimony given by me in the case aforesaid.

_____
MATHEW BRUCE RAY

Sworn and subscribed before me

this _____ day of _____. 1989.

_____

Notary Public

My commission expires: _____

WEST COURT REPORTING
368 PIKE STREET
P. O. BOX 854
Lawrenceville, Georgia 30246-0854
Phone: (404) 963-0003

CERTIFICATE

GEORGIA:

GWINNETT COUNTY:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 16 represent a true, correct, and complete transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This the 9th Day of December, 1989.

ROBIN BLOODWORTH, CCR, B-1257

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES E. McKinney, et al., :

Plaintiffs, :

v. : 1:87-cv-565-CAM

SOUTHERN WHITE KNIGHTS, KNIGHTS OF THE KU KLUX KLAN, ET AL., :

Defendants. :

ORDER

The above-styled action is before the court on defendants' motion to vacate the defendants' motion for sanctions. For the reasons stated below both motions are DENIED.

Defendants' file their motion vacate on the ground that they have newly discovered evidence which may have changed the outcome of their trial. To succeed on said motion defendants:

> ... must show that the evidence was discovered since the trial; must show facts from which the court may infer reasonable diligence on the part of the movant; must show that the evidence is not merely cumulative or impeaching; must

> show that it is material; and must show that such evidence will probably produce a different result.

Butts v. Curtis Publishing Company, 242 F.Supp. 390 (N.D.Ga. 1964) quoting Chemical Delinting Company v. Jackson, 193 F.2d 123, 127 (5th Cir. 1951). Defendants have failed to meet the above standard.

Therefore, defendants' motion to vacate is DENIED.

Defendants' are requesting that sanctions be imposed on plaintiffs' attorney pursuant to Fed.R.Civ.P.11. Defendants' allege that discovery request for production of documents was made by plaintiffs' attorney without a reasonable inquiry as to whether said request was necessary. Fed.R.Civ.P. 11 states in relevant part:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessry delay or needless increase in the cost of litigation.

This court holds that defendants have failed to prove the above standard. Considering the extreme difficulty that

plaintiffs have had in collecting their judgment, and the history of evasiveness of many of the defendants and others working in conjunction with defendants., this court holds that plaintiffs' discovery request was reasonable.

Therefore, defendants' motion for sanctions is DENIED.

SO ORDERED, this 10 day of May, 1990.

UNITED STATES DISTRICT JUDGE